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State v. Casad Respondent's Brief Dckt. 41613

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 41613
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2013-5481
)	
JEFFREY DANIEL CASAD,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE MELISSA MOODY
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

NICOLE L. SCHAFER
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

ERIC D. FREDERICKSEN
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

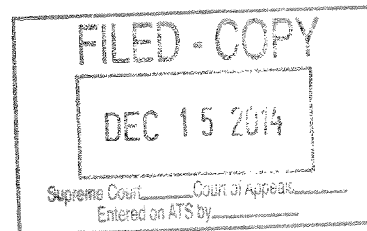


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STATEMENT OF THE CASE

Nature Of The Case

Jeffrey Daniel Casad appeals from the judgment entered upon the jury verdicts finding him guilty of two counts of injury to child. Casad contends the district court erred in admitting his statements to police regarding his disinterest in having his children returned to his custody.

Statement Of Facts And Course Of Proceedings

The Department of Health and Welfare (DHW) and police officers visited Casad's home to investigate an anonymous referral regarding Casad's two infants. (Tr.¹, p.247, L.8 – p.248, L.11.) After observing the condition of the children and speaking with Casad, the DHW removed the children from Casad's home. (Tr., p.256, L.21 – p.257, L.21.)

A grand jury indicted Casad for two counts of felony injury to child for placing his children in a position where they failed to thrive. (R., pp.9-10.) The matter initially proceeded to a joint jury trial with Casad and Krystal Leggans, Casad's co-defendant and the mother of his children. (See generally, 6/18/2013 Tr.) A mistrial was declared in that original trial (6/18/2013 Tr., p.38, Ls.7-8) and Leggans subsequently pled guilty to her charges (Tr., p.481, Ls.2-10).

Prior to Casad's retrial, the state filed a notice of intent to use 404(b) evidence. (R., pp.72-88.) Specifically, the state sought to use Casad's

¹ There were three transcripts prepared in this case. The majority of the citations in the Respondent's brief will be to one volume, containing the pretrial conference, three motion hearings, the three-day jury trial, and sentencing. This transcript will be referred to simply as "Tr."

statements to authorities that he would not cooperate with the DHW to reunite with his children as evidence to prove knowledge, intent, and/or absence of mistake. (R., pp.72-76.) At an initial hearing on the matter, the trial court ruled the statements made by Casad indicating his intent not to work with the DHW to get his children back were admissible as *res gestae*. (Tr., p.21, L.23 – p.22, L.2.) Upon reconsideration, the trial court maintained its ruling that the evidence was admissible but concluded it was “relevant to the act or the failing to act portion of the State’s burden of proof” in that “a fact finder could find that it is more likely that someone who has no interest in their children is more likely to act or failed to act where a reasonable person would otherwise act.” (Tr., p.76, Ls.12-17.)

The case proceeded to a jury trial at which multiple witnesses testified and the state presented evidence of Casad’s admissions that he knew his children were not being properly cared for and he should have taken action, including having his mother care for the babies. (Tr., p.323, L.1 – p.324, L.7.)

The jury found Casad guilty of both charges. (Tr., p.624, Ls.9-24; R., pp.155-156.) The court placed Casad on probation for six years with an underlying 10-year unified sentence with the first two years fixed on the first charge and a consecutive five years indeterminate on the second. (Tr., p.683, L.25 – p.685, L.23; R., pp.218-224.) Casad filed a timely notice of appeal. (R., pp.225-228.)

ISSUE

Casad states the issue on appeal as:

Did the district court err when, over Mr. Casad's objection, it permitted the State to present irrelevant, propensity evidence?

(Appellant's Brief, p.3.)

The state rephrases the issue on appeal as:

Has Casad failed to show error in the admission of his statements indicating his refusal to reunite with his children after they were removed from his custody by the Department of Health and Welfare?

ARGUMENT

Casad Has Failed To Show Error In The Admission Of His Statements Showing Casad Had No Desire To Achieve Reunification With His Children Following Their Removal From His Care

A. Introduction

Casad challenges the district court's ruling allowing admission of certain statements he made, after his children were removed by the DHW, regarding his lack of interest in his children's care or in seeing them again. Casad asserts the district court admitted the evidence based solely on its propensity value. (Appellant's brief, p.6.) Casad also contends that, regardless of the court's reasoning, the evidence was not relevant to show Casad's "intent with respect to the crimes charged." (Appellant's Brief, p.7.) Ultimately, Casad's argument fails. The evidence was properly admissible because it consisted of relevant statements, not acts to be analyzed pursuant to Rule 404(b), and, even if I.R.E. 404(b) applies, the evidence was relevant to Casad's intent or absence of mistake in the crimes charged. Further, even if Casad can meet his burden of showing error, any error is harmless.

B. Standard Of Review

A trial court has "broad discretion" in determining whether to admit or exclude evidence, "and *its judgment in the fact finding role* will only be disturbed on appeal when there has been a clear abuse of discretion." State v. Watkins, 148 Idaho 418, 421, 224 P.3d 485, 488 (2009) (quoting State v. Gleason, 123 Idaho 62, 65, 844 P.2d 691, 694 (1992)) (emphasis original). However, whether

evidence is relevant is a question of law the Court reviews *de novo* . State v. Shackelford, 150 Idaho 355, 247 P.3d 582 (2010).

Rulings under I.R.E. 404(b) are reviewed under a bifurcated standard: whether the evidence is admissible for a purpose other than propensity is given free review while the determination of whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice is reviewed for an abuse of discretion. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009).

C. Casad Has Failed To Show Error In The Admission Of His Statements

To be admissible, evidence must be relevant. I.R.E. 401, 402. Evidence that tends to prove the existence of a fact of consequence in the case, and has any tendency to make the existence of that fact more probable than it would be without the evidence is relevant. State v. Hocker, 115 Idaho 544, 547, 768 P.2d 807, 810 (Ct. App. 1989).

Although not specifically quoted in his brief on appeal, it appears the evidence Casad objects to having been admitted at trial consists of statements Casad made to law enforcement and DHW personnel both during their initial investigation and after they removed his children from his custody. Those statements include Casad telling a police officer “I don’t want my kids back,” and asserting he would not “do anything [the DHW] ask[s] me to do, and they can have [my kids] if they want them.” (Tr., p.244, Ls.20-23.) The other complained-of evidence was Casad’s conversation with a social worker wherein he declined visitation with his children because “he was too busy.” (Tr., p.321, Ls.8-11.)

Casad's complaint on appeal – that the statements were inadmissible propensity evidence – depends on application of the prohibition set forth in I.R.E. 404(b). Although Casad labeled the statements made by Casad as 404(b) evidence and the trial court ultimately admitted the statements on rehearing under a Rule 404(b) analysis, Casad's statements are not subject to analysis under that rule because his statements do not qualify as crimes, wrongs or acts.²

"Evidence of other crimes, wrongs, or acts is not admissible to prove a defendant's criminal propensity. However, such evidence may be admissible for a purpose other than that prohibited by I.R.E. 404(b)." State v. Truman, 150 Idaho 714, 249 P.3d 1169 (Ct. App. 2011) (citations omitted). Thus, in order to come within the purview of I.R.E. 404(b), the evidence at issue must constitute a crime, wrong or act. In State v. Whitaker, 152 Idaho 945, 948, 277 P.3d 392, 404 (Ct. App. 2012), the Court considered the words "wrongs" and "acts" as used in I.R.E. 404(b). The Court noted that "wrongs" could "broadly include any sort of conduct that is likely to reflect adversely on the person in the eyes of the jury even though it has not been forbidden by the positive law." Id. (quotations and citation omitted). As for the word "act," the Court stated it is "also subject to multiple interpretations," which could "include any conduct, good or bad, that tended to show the character of the person involved." Id. at 949, 277 P.3d at 396 (citation omitted). Even under Whitaker's broad reading of "wrongs" and

² The state below did not originally file a notice to introduce Casad's statements as 404(b) evidence "because the State believed that the evidence of the Defendant[s] conduct toward [his] children and [his] attitude towards their wellbeing was intrinsic and not 404(b) evidence." (R., p.83.)

“acts,” there is still a requirement that the evidence at issue involve conduct. Thoughts and statements are not conduct. As such, the evidence about which Casad complains is not subject to analysis under I.R.E. 404(b). See, e.g., State v. Smith, 135 Idaho 712, 722, 23 P.3d 786, 796 (Ct. App. 2001) (testimony about defendant’s “preference for older, heavy-set women and his infatuation with [the victim] was not in itself evidence of a crime, wrong or act of [defendant] to prove he acted in conformity therewith”). As discussed below, Casad’s statements that he had no desire to reunite with his children once they were removed from the DHW was relevant to his intent to the crimes for which he was charged, especially when he denied any criminal intent or knowledge of what was happening in his home. Although not a basis for the trial court’s admission of such evidence, this Court can affirm on the correct theory. Murray v. State, 156 Idaho 159, ___, 321 P.3d 709, 714 (2014).

Even if this Court concludes I.R.E. 404(b) is the appropriate framework for reviewing the admission of Casad’s statements, the district court’s admission of those statements ultimately survives scrutiny. Under I.R.E. 404(b), evidence of prior wrongs or acts may be admitted to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. I.R.E. 404(b); State v. Phillips, 123 Idaho 178, 845 P.2d 1211 (1993); State v. Gauna, 117 Idaho 83, 87, 785 P.2d 647, 651 (Ct. App. 1989). As long as the evidence is relevant to prove some issue other than the defendant’s character and its probative value for the proper purpose is not substantially outweighed by the

probability of unfair prejudice, it is not error to admit it. State v. Cross, 132 Idaho 667, 670, 978 P.2d 227, 230 (1999).

Application of these principles to the facts of this case supports a conclusion that the statements made by Casad regarding his desire not to reunite with his children were relevant given his denial of criminal intent and knowledge.³ Law enforcement found Casad's dirty and lethargic infants in a downstairs room that was filthy and reeked of urine. (Tr., p.202, L.23 – p.214, L.5.) Doctors diagnosed Casad's children as "failure to thrive" upon their removal from Casad's home. (See generally, Tr., pp.360-393.) In spite of this, Casad initially claimed his "kids [were] fine" (Tr., p.230, L.10), and made it clear his job was to go to work and bring in the money while Leggans was responsible for their children's wellbeing and care (Tr., p.532, L.17 – p.533, L.7). Casad's statements that he did not want his children back and the state could have them, further bolstered by his statements that he was too busy to make time to see his children after they were removed from his custody by the DHW, were relevant to his intent and/or absence of mistake given his denial of any criminal intent or knowledge of wrongdoing.

This is also the express purpose for which the state offered the evidence at trial. The state specifically argued to the jury that Casad's declarations of his

³ The state's argument on appeal reflects the basis on which the state offered the evidence at trial. (R., pp.72-88.) The district court reasoned Casad's statements of indifference were relevant to whether he "failed to act" to protect the children. (Tr., p.76, Ls.12-17.) This Court can affirm on either theory. Murray v. State, 156 Idaho 159, ___, 321 P.3d 709, 714 (2014) ("If a district court reaches the correct result by an erroneous theory, this Court will affirm the order upon the correct theory." (internal quotations omitted)).

desire not to reunite with his children went to his intent and/or the absence of mistake given his denials of criminal intent. Casad's statements went to the willfulness of his conduct in turning a blind, uncaring eye to what was happening to his children in his own home. (Tr., p.586, Ls.5-15; p.595, L.21 – p.596, L.22.)

Whether viewed under the general relevance standard or I.R.E. 404(b), Casad has failed to show the district court erred in admitting his statements.

D. Even If This Court Concludes Casad Has Met His Burden Of Showing Evidentiary Error, Any Such Error Is Harmless

Idaho Criminal Rule 52 provides that “[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.” I.C.R. 52. “The inquiry is whether, beyond a reasonable doubt, a rational jury would have convicted [the defendant] even without the admission of the challenged evidence.” State v. Johnson, 148 Idaho 664, 669, 227 P.3d 918, 923 (2010) (citing Chapman v. California, 386 U.S. 18, 24 (1967); Neder v. United States, 527 U.S. 1, 18 (1999)); see also State v. Perry, 150 Idaho 209, 227, 245 P.3d 961, 979 (2010).

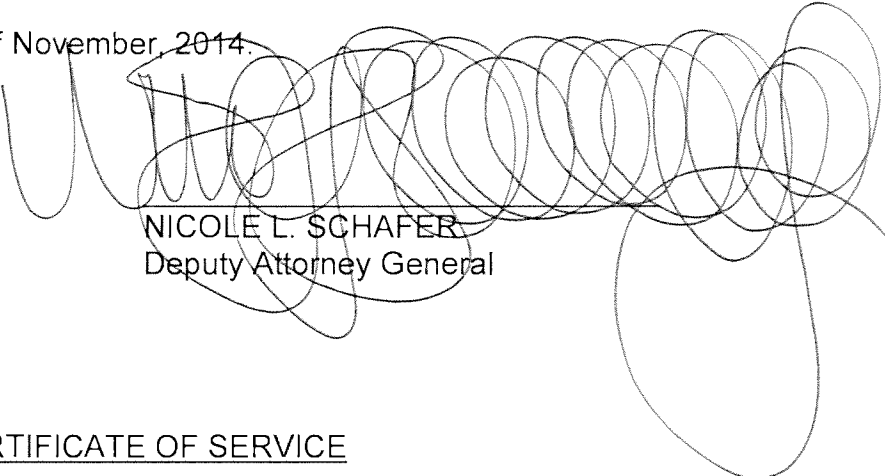
Even if the district court erred in permitting the introduction of Casad's statements, such error is harmless. Given the evidence presented, which included descriptions of the conditions the children were found living in (Tr., p.204, L.1 – p.214, L.5; 248, L.21 – p.257, L.1), medical testimony as to the children's conditions before and after their removal (Tr., pp.360-393), and Casad's admissions to conduct alleged in the Indictment (Tr., p.323, Ls.1-17),

this Court can conclude beyond a reasonable doubt that any error in the admission of the I.R.E. 404(b) evidence was harmless.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon the jury verdicts finding Casad guilty of injury to child.

DATED this 15th day of November, 2014.



NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of November, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



NICOLE L. SCHAFER
Deputy Attorney General